

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD A. BUTTERFIELD
Claimant

VS.

WESTERN RESOURCES
Respondent
Self-Insured

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Docket No. 193,870

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge James R. Ward entered in this proceeding on March 13, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for benefits and found claimant had not proven he had experienced harmful exposure to industrial noise that would have caused a hearing loss within two hundred (200) days of September 28, 1994, the date of written claim for benefits. The issue now before the Appeals Board is whether claimant made timely written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of preliminary hearing, the Appeals Board finds as follows:

The Order of the Administrative Law Judge denying benefits should be affirmed. Claimant alleges he sustained hearing loss as a result of his work activities between December 1979 and September 24, 1994. Claimant filed with the Director a Form E-1, Application for Hearing, on September 28, 1994. Even if claimant had one (1) year to make written claim for benefits, the evidence fails to establish it is more probably true than not that claimant experienced a work-related hearing loss one (1) year preceding September 28, 1994, the date the Appeals Board finds that claimant made written claim. Claimant's argument that the annual hearing tests respondent provided constitute written claim is without merit. Claimant also argues annual hearing tests and respondent's furnishing hearing protection devices constitute medical treatment. Likewise, that argument must fail.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward entered in this proceeding on March 13, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, Kansas
 Gary E. Laughlin, Topeka, Kansas
 James R. Ward, Administrative Law Judge
 George Gomez, Director